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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**13 JESSE CRUZ, MARIA CRUZ, and  
GEOVANY MARTINEZ,**

## Plaintiffs,

VS.

17 WABASH NATIONAL CORPORATION;  
18 MERITOR, INC.; DOES I through XX,  
inclusive and ROE BUSINESS ENTITIES I  
through XX, inclusive,

## Defendants.

Case No.: 2:12-cv-01627-RCJ-CWH  
Consolidated with:  
02:11-cv-00342-LDG-VCF

**RESPONSE TO DEFENDANT  
MERITOR, INC'S NOTICE OF MOTION  
AND MOTION TO DISMISS PURSUANT  
TO RULE 12(b)(6); MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

21 COMES NOW the Plaintiffs, by and through their attorneys of record, Patrick K.  
22 McKnight, Esq. and Ramzy Paul Lada, Esq., and hereby posses opposes Defendant Meritor's  
23 Motion to Dismiss. This Opposition is based upon the papers and pleadings on file, the attached  
24 Points and Authorities, and upon any oral argument permitted at the hearing of this matter.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant Meritor was one of thousands of suppliers to trailer manufacturer and co-defendant Wabash. Plaintiffs could not through any reasonable pre-complaint inquiry have ever discovered either the name or role of an equipment supplier like Meritor in the design and manufacture of the defective cross over brake line at issue in this case. It was only through Wabash's response to Plaintiff's discovery that Meritor emerged as having some potential role in the location of the defective brake lines at issue. Since Plaintiff had clearly plead the same claims against Doe Defendants in its state-filed complaint, and timely substituted Meritor in upon learning of its role in the design of the braking system, Nevada's "relation back" doctrine applies, relating the original filing of the complaint to Meritor for purposes of statute of limitations.

**I. FACTS**

Damage to the brake air line on a trailer being towed by Plaintiff Cruz forced him and co-Plaintiff Martinez to an emergency stop on a busy and dark freeway, where another driver ran into the back of Cruz' trailer and caused a massive explosion.

The cross-over air line in question was designed and built so it suspended horizontally less than two feet from the ground on the undercarriage of the trailer. The cross-over line was in front of the axle and had no plate or other protection, leaving it completely vulnerable to disruption from common road debris. As is common in semi-trailers, a loss of air pressure leads to a lock up of the brakes. Even a slight crack or hole in the air line can deplete the air and force a driver on a busy highway to come to a sudden stop as the brakes lock.

During his usual mail run from California to Las Vegas, Cruz was driving in tandem with Martinez. A black common tire tread lay coiled like a snake in Cruz' path, hidden against the black pavement and dark, moonless night. Cruz saw the tread late, but at 65 mph, believed it was safer to pass over it rather than risk an emergency lane change. The tire tread struck the low-hanging cross-over air line and Cruz's brakes began to drag.

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1 Not certain what was causing the problem, Cruz pulled to the side of the road. The brakes  
 2 completely locked before Cruz got his trailer completely off the road, with about three feet of his  
 3 rear left corner intruding into the travel lane. Martinez stopped to help. While the two Plaintiffs  
 4 were examining the brake line damage, the driver of another semi truck ran into the rear of Cruz'  
 5 trailer causing a massive explosion which injured Cruz and Martinez.

6 The claim at issue is based upon negligence and products liability for suspending an  
 7 unprotected, rigid cross-over air line in front of the axle, leaving the air line vulnerable to  
 8 damage from common road debris. Most trailer designs, even those found on other Wabash  
 9 trailers, protect their air lines by routing them up along the frame and behind the axle.

10 **II. PROCEDURAL HISTORY**

11 The action was brought in state court originally against Wabash and Does I through XX  
 12 and Roe Business Entities I through XX on April 17, 2012. Wabash removed the case to Federal  
 13 court based upon Diversity Jurisdiction (Sept. 14, 2012 **Document 1 on file**) and filed a Motion  
 14 to Dismiss for failure to state a claim (July 19, 2013 **Document 7 on file**). The Court granted the  
 15 Motion with leave to amend (March 18, 2014 **Document 26 on file**).

16 Even though the Motion to Dismiss was pending, Plaintiffs did not sit on their laurels.  
 17 Plaintiffs opposed Wabash' attempt to stay Discovery. (**Document. 19 on file**) Though the Court  
 18 denied the Motion to Stay discovery on December 26, 2013 (**Document 39 on file**) Plaintiffs did  
 19 not wait and sent out Discovery requests on Oct. 28, 2013 requesting the identify of all parties  
 20 who contributed to the design and manufacture of the air line in question. **Exhibit 1**.

21 The process has been painful and not always productive as Wabash has not been fully  
 22 forthcoming in its answers to Discovery. Meritor was one among six names of third parties who  
 23 had contributed something to the braking system, but as the Court can see, the roles of each of  
 24 those named was less than sufficient to make an adequate determination as to liability:

25 From review of its sales records, the brake systems selected for the subject trailer  
 26 contained several component parts, each designed by different entities. This  
 27 included a Bendix service valve, a Tramec emergency valve, Dayton brake drums,  
 MGM brake chambers, Abex brake linings, and Rockwell axles manufactured by  
 what is now known as Meritor.

28 Wabash Answers to Interrogatories No. 3, **Exhibit 2**, p. 5, dated Jan. 17, 2014.



1        This Answer was not fully responsive and was insufficient to determine what any of these  
 2 named parties had done in connection with the selection and routing of the air line, prompting a  
 3 meet and confer telephone conference April 4, 2013 that led to Wabash's more specific assertion  
 4 that Meritor had designed the brake line configuration in **Exhibit 3**. Around this same time, the  
 5 Court had granted leave to amend on March 3, 2014 (**Document 26 on file**) the Complaint for  
 6 the sole purpose of more specificity by the Defendants, and since the Plaintiffs now had more  
 7 specificity from recent discovery both as to Wabash and Meritor, the Amended Complaint  
 8 provided the detail for both parties. As part of its responsive Pleadings, the Plaintiffs included a  
 9 copy of the Proposed Amended Complaint that included Meritor as a named defendant on April  
 10 4, 2014 (**Document 31 on file**).

11       The Amended complaint provided more details, but was still based on the original claims  
 12 made against Doe Defendants. The original claims as pled were sufficient for the information  
 13 reasonably available to Plaintiffs at the time, as well as for the requirements for a Complaint  
 14 filed in state Court, which has a different pleading standard than in Federal Court.

15 **III. LEGAL ANALYSIS**

16       **Nevada's Relation Back Doctrine Applies**

17       This Motion is properly analyzed under NRCP 10, which allows for a relation back of the  
 18 Statute of Limitations to the time of the filing of the Original Complaint. Rumberg v. Weber  
 19 Aircraft Corp. 424 F.Supp. 294 (D. Cal. 1976).

20       A federal court sitting in diversity must apply the substantive law of the forum, see, e. g.,  
 21 Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938); Hanna v. Plumer, 380  
 22 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8, including state statutes of limitations, Guaranty Trust Co.  
 23 of New York v. York, 326 U.S. 99, 65 S.Ct. 1464, 89 L.Ed. 2079 (1945).

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1           In a case similar to the case at bar, the Federal District Court in Rumberg, above, held  
 2 that it was proper to apply California's rules of civil procedure to allow the adding of defendant  
 3 after the statute of limitations had passed. Like in this case, the Plaintiff in Rumberg had filed a  
 4 timely complaint in state court against a manufacturer for defective vehicle (a fighter jet), and  
 5 included liability for "Doe Defendants." Just like this case, the Plaintiff did not include the  
 6 identity of one of the manufacturers of one of the components of the ejection system, and later  
 7 added the defendant through an Amended Complaint after the initial statute of limitations had  
 8 run.

9           In ruling that the statute of limitations did not prevent the Plaintiff from adding the  
 10 defendant to the action, the Federal District Judge reasoned that the California rules of civil  
 11 procedure governing the replacing of Does was a substantive matter that the federal court must  
 12 follow:

13           California's substantive policy to allow a plaintiff who begins his lawsuit within a  
 14 year of its accrual three more years to ascertain the identity of unknown  
 15 defendants is implemented through the procedural mechanism of "Doe"  
 16 allegations provided in CCP s 474. ... The court finds that California's policy,  
 17 embodied in CCP ss 340(3), 474, and 581a, to provide a plaintiff extra time to  
 18 seek out unknown defendants can be conceptually divorced from the merely  
 procedural pleading device of "Doe" allegations. Accordingly, this court can  
 apply California's qualified four-year limitations period without requiring  
 compliance in this forum with an implementing state procedural mechanism  
 eschewed for other reasons, see pp. 299 and 300 infra, by a local federal rule.

19 Rumberg at 298.

20           Further, the Court also noted that it was persuaded by "California's policy in favor of  
 21 litigating cases on their merits requires that the fictitious name statute be liberally construed." Id.  
 22 at 297.

23           Applying Nevada's Law on Doe Defendants

24           Nevada allows the naming of a defendant after the statute of limitations has run where the  
 25 Plaintiff has filed a timely complaint and has pled by a fictitious name such as Doe. NRCP 10  
 26 states:

27           //////

28           //////



1                             **(a) Caption; Names of Parties.** Every pleading shall contain a caption setting  
 2 forth the name of the court and county, the title of the action, the file number, and  
 3 a designation as in Rule 7(a). In the complaint the title of the action shall include  
 4 the names of all the parties, but in other pleadings it is sufficient to state the name  
 5 of the first party on each side with an appropriate indication of other parties. A  
 6 party whose name is not known may be designated by any name, and when the  
 7 true name is discovered, the pleading may be amended accordingly.

8                             The Nevada Supreme Court has given a liberal interpretation to NRCP 10. In  
 9                             Nuremberger Hercules v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1992), the Court ruled that it  
 10 was proper to amend the complaint under NRCP 10(a) to allow the Plaintiff to add the  
 11 manufacturer of a moped after the statute of limitations had run. The Supreme Court made it  
 12 clear that, just like in the Rumberg case, claims should be heard on the merits and should not be  
 13 frustrated because Plaintiff was not aware of other parties at the time of filing:

14                             We commence with the premise that meritorious causes of action should not be  
 15 frustrated where, despite reasonable diligence, the true identity of culpable parties  
 16 is uncertain or unknown to plaintiff or plaintiff's counsel.

17                             *Id.* at 878.

18                             1. The Nevada Court laid out three elements of utilizing Rule 10. The first is to name a Doe  
 19 Defendant.

20                             As Meritor has acknowledged, the Plaintiffs did this.

21                             2. The second element is to plead a "clear correlation between the fictitious defendants and  
 22 the pleaded factual basis for liability." *Id.* at 881.

23                             Plaintiff has also done this. As the Nevada Court explained what this means:

24                             Second, it should be clear that fictitious defendants may not be properly included  
 25 in a complaint merely as a precautionary measure in the event **theories of  
 26 liability other than those set forth in the complaint** are later sought to be added  
 27 by amendment. *Id.*

28                             The Nevada Supreme Court said it wants to be sure that the Plaintiffs indicate their intent  
 to sue the responsible parties:

29                             [*I*]t is equally obvious that Virostek intended to sue the parties responsible for  
 30 manufacturing, designing and marketing the defective Sachs moped that caused  
 31 his injuries, and that he was not totally certain of their true identities. *Id.* at 879.

32                             In the case at hand, Plaintiffs' initial Complaint sufficiently pled the SAME THEORIES  
 33 of liability as it later pleads against Meritor: Defective brake design and manufacture.



1 In the original Complaint, Plaintiffs pled:

2 9. JESSE CRUZ was forced to pull over on the side of the road due to a defect in  
3 the trailer and during that emergency stop, another vehicle struck the trailer  
injuring JESSE CRUZ and GEOVANY MARTINEZ.

4 ...  
5 11. **Defendants** and each of them were negligent

6 ...  
7 14. **Defendants** designed and manufactured and sold the trailer which was  
defective and unreasonably dangerous which led to the Plaintiff's injuries.

8 ...  
9 17. That **Defendants** breached their warranty of implied fitness.

10 **Exhibit 4**, p. 3, emphasis added.

11 Just as in Nuremberger, the Plaintiff in the case at bar identified Does and Roes as  
12 "Defendants" and pled the same claims in its initial complaint as it did in its amended complaint.  
13 Plaintiffs in this case sued Defendants" for defective design and manufacture of the brake lines.  
14 As the Court can see, "Defendants" is plural, and includes Does and Roes. This is the basis of the  
15 claims against Meritor and is a "clear correlation between the fictitious defendants and the  
16 pleaded factual basis for liability" against Meritor. The claims did not change. There were no  
17 new claims added under different theories of liability.

18 Moreover, in Nuremberger, the Plaintiff did not name the manufacturer of the moped  
19 even though he knew the moped was the cause of the accident. In the case at bar, Plaintiffs did  
not know and could not have guessed or learned through reasonable means that the axle  
20 manufacturer would have designed the routing and selection of air lines.

21 3. Meritor does not argue, and thus admits, that Plaintiffs satisfied the third element,  
diligence.

22 Plaintiffs knew the trailer had been designed and built by Wabash. But Plaintiffs did not  
23 know, and could not have known through reasonable inquiry, what other parties may have  
24 contributed to the brake line system at issue. Only through filing and discovery could such a  
25 determination be made. Plaintiffs were diligent in pursuing discovery on this issue by sending  
26 Interrogatories even BEFORE the court allowed discovery to begin, and specifically requested  
27 the identity of all parties who were involved in the design and manufacture of the brake lines.

28 ////



1 Only Wabash had access to this information, and even they have indicated the difficulty in  
 2 providing the information.

3 Moreover, in this case, Plaintiffs not only did *not* know the name of Meritor, they could  
 4 not even have known what role a third party like Meritor would have played in the process.  
 5 There are thousands, if not millions of parts suppliers for a trailer like the one in question. Some  
 6 merely provided bolts and hoses, and no doubt, some provided assembled components, such as  
 7 axles and air tanks. It is unreasonable, if not impossible, to try to imagine every scenario in  
 8 which a third party defendant could have contributed to the design and manufacture of cross over  
 9 brake lines such that each possible scenario could have been outlined in detail in a Complaint.  
 10 Such a document would necessarily (and unreasonably) be thousands of pages as the Plaintiffs  
 11 try to satisfy Meritor's fantasy world of pleading to capture every Doe imaginable.

12 The design and manufacturing of a trailer is complex by its nature. Plaintiffs are not  
 13 vehicle manufacturers and do not know the intricacies and complexities of all that is involved in  
 14 designing and manufacturing such a unit. It was obvious Wabash designed and manufactured,  
 15 but it was not obvious whether they employed independent parties in the process. Plaintiffs did  
 16 not know who, if anyone, was part of the design and manufacturing team, so it generalized  
 17 "Defendants" as a plural unit so as to include any others who may later be identified as part of  
 18 the design team.

19 **IV. CONCLUSION**

20 Plaintiffs respectfully request this Court deny the motion.

21 DATED this 18<sup>th</sup> day of August, 2014.

22 **LADAH LAW FIRM**

23 /s/ *Ramzy Paul Lada, Esq.*

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24 RAMZY PAUL LADAH, ESQ.  
 25 Nevada Bar No. 11405  
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 27 Las Vegas, NV 89101  
 28 Attorneys for Plaintiffs



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), on this 18<sup>th</sup> day of August, 2014, a true and complete copy of **RESPONSE TO DEFENDANT MERITOR, INC'S NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO RULE 12(b)(6); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** was served on the following interested parties by the action(s) indicated below:

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## 11 | Method of Service

- 12       **U.S. First Class Mail:** I deposited a true and correct copy of said document(s) via U.S.  
13      First Class mail, with postage pre-paid.

14       **Facsimile:** I caused said document(s) to be transmitted by facsimile transmission. The  
15      sending facsimile machine properly issued a transmission report confirming that the  
transmission was complete and without error.

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17      Adobe Acrobat PDF of the document to the email address(es) identified below.

18       **Electronic Service:** I caused said document(s) to be delivered by electronic means upon  
all eligible electronic recipients via the United States District Court CM/ECF system

/s/ Crystal Y. Case  
An employee of Ladah Law Firm

# **EXHIBIT 1**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JESSE CRUZ, and individual; MARIA CRUZ, an individual; and GEOVANY MARTINEZ, an individual,

Case No.: 2:12-cv-01627-RCJ-CWH

**Plaintiffs,**

vs.

12 WABASH NATIONAL CORPORATION;  
13 DOES I through XX, inclusive and ROE  
14 BUSINESS ENTITIES I through XX,  
inclusive.

## **INTERROGATORIES TO DEFENDANT (FIRST SET)**

**Defendants.**

17 TO: Defendant Wabash National Corporation, and its counsel, CRAIG NEWBY, ESQ.:  
18 COMES NOW, Plaintiffs, by and through their attorneys of record, RAMZY PAUL  
19 LADAH, ESQ. and PATRICK K. McKNIGHT, ESQ., and hereby requests that Defendant  
20 WABASH NATIONAL CORPORATION answer in writing, under oath, the following  
21 Interrogatories pursuant to FRCP 33, within thirty (30) days from service hereof.

22        NOTE: Answers to the interrogatories must include not only information in your  
23 personal knowledge and possession but also any and all information available to you, including  
24 information in the possession of any of your current or former agents, attorneys, accountants or  
25 employees. If a claim of privilege is made as to any information or document sought by these  
26 interrogatories, you must specify the basis for privilege and describe the information or  
27 document claimed to be privileged.

28 | // / / /



## **PRELIMINARY STATEMENT**

2 The following preliminary statement and definitions apply to each of the Interrogatories set forth  
3 hereinafter and are deemed to be incorporated therein:

4      1. The singular number and the masculine gender as used herein also mean the plural,  
5      feminine or neuter as may be appropriate.

6 2. These Interrogatories call for all information (including information contained in  
7 writings) as is known or reasonably available to Defendant's attorneys or any investigators or  
8 representatives or others acting on Defendant's behalf or under Defendant's direction or control.

9     3.     Wherever you are asked to "identify" or "describe" a thing, or a writing, please state  
10 either:

- 11 a. A full description thereof, including without limitations:

12       1. The date it bears;

13       2. The name of each person who prepared it or participated in any way in its

14            preparation;

15       3. The name of each person who signed it;

16       4. The name of each person to whom it or a copy of it was addressed;

17       5. The name of each person who presently has custody of it or a copy of it;

18       6. Its subject matter and its substance; or

19 b. That you will voluntarily make it available to counsel for Applicant for inspection

20            and copying at a mutually convenient time and place.

21 4. A request that Defendant state the source of information about certain facts includes a

22 request that Defendant state the means by which such knowledge has been preserved; if such

23 source of information of facts is an oral communication, its date of origin, sender and recipient

24 should be stated; if such source of preservation is a writing; its date of origin, its nature,

25 originator, recipient and last known custodian should be stated.

- 1       5. The term "writing" or "document" as used in these Interrogatories includes, but is not  
2 limited to, any record, minutes of meetings, agreement, contract, memorandum, e-mails, text  
3 messaging, fax, electronic message of any kind map, diagram, illustration, photograph, telegram,  
4 written analysis, report, recordings, transcriptions and memoranda made of any telephone  
5 communication or face to face oral meeting or conversation, written communication (which  
6 includes, but is not limited to, any letter, inter office communication or telegram), paper, book,  
7 or other document. It includes the original, any copy and any draft thereof.
- 8       6. As to each individual identified in the answer to any Interrogatory, state:  
9           a. His or her name;  
10          b. His or her last known address;  
11          c. His or her occupation;  
12          d. His or her last known business affiliation;  
13          e. Whether any statement pertaining to any matter involved in this litigation,  
14              whether written or oral, or by recording device or by a court reporter, or whether  
15              signed or unsigned, has been taken from him or her; if so, how many such  
16              statements and as to each such statement, the following:  
17                  1. The identity of each person taking such statement and the relationship, if  
18                      any, of that person to Defendant;  
19                  2. The date of such statement;  
20                  3. The identity of the employer of the person giving the statement and when  
21                      the statement was given;  
22                  4. The identity of the person who presently has possession of, or control  
23                      over, such statement, or of any recording or transcription thereof, or if not  
24                      known, the identity of the person who last had such possession or control.  
25        7. Whenever you are unable to state an answer to these Interrogatories based upon your own  
26              personal knowledge, please so state, or instead identify the persons you believe to have such  
27              knowledge, what you believe that correct answer to be and the facts upon which you base your  
28              answer.

1       8. Whenever a question is directed to "you", the question is directed to the Defendant  
2 answering these Interrogatories, and includes its officers, directors, management, employees and  
3 agents who act on its behalf.

4       9. The term "subject trailer" or "subject vehicle" is referring to the Wabash Trailer VIN  
5 1JJV532Y8WL427002.

6 **INTERROGATORY NO. 1:**

7       State the correct name and mailing address of this Defendant, as well as the name and  
8 address of any person(s) assisting in answering these interrogatories.

9 **INTERROGATORY NO. 2:**

10       State the date of manufacture of the subject vehicle, the date it left this Defendant's  
11 control, and who it was sold to as well as the name and address of the facility where the vehicle  
12 was manufactured.

13 **INTERROGATORY NO. 3:**

14       State the names and addresses of all persons primarily responsible for the design,  
15 engineering and safety engineering of the brakes and brake air lines for the subject vehicle,  
16 including department heads as well as those directly involved in the design and testing.

17 **INTERROGATORY NO. 4:**

18       Identify any and all studies, analyses or tests this Defendant has conducted or performed  
19 with regard to the subject vehicle's brake air lines exposure to damage from road debris or  
20 objects, and for each state the following:

- 21       (a)      The number of such tests that were performed;
- 22       (b)      A description of the methodology for each such test;
- 23       (c)      The name or test number by which the test results are referred;
- 24       (d)      A summary of the test results;
- 25       (e)      The name and address of each person involved in the performance of such tests or  
26                  analyses;

27       ////

28       ////





**1 | INTERROGATORY NO. 5:**

Identify any and all trailer designs manufactured by Wabash that used a brake air line that crosses over in front of the axle, and for each, state whether those designs are currently being manufactured by Wabash, and if not, when was such a design changed or discontinued, and why.

**5 | INTERROGATORY NO. 6:**

6 State whether this Defendant provided any information, warnings and/or instructions to  
7 buyers and/or repairmen of the subject trailer concerning the protection and/or replacement of  
8 brake air lines, and identify any such information, warnings and/or instructions, and attach a  
9 copy.

**10 | INTERROGATORY NO. 7:**

11 Have you ever received any notice, complaints, claims and/or lawsuits prior to this  
12 incident of any damage to brake air lines and if yes, identify who gave you notice, complaint,  
13 claim or lawsuit, when and how it was made, and whether the damage resulted in an accident,  
14 personal injury or property damage.

**15 | INTERROGATORY NO. 8:**

16 Identify any and all discussions, oral or written, that you have had regarding any concerns  
17 by you or others about the safety of brake air lines crossing over in front of the axle exposing the  
18 line to damage from road debris and objects during travel.

**19 | INTERROGATORY NO. 9:**

20 Identify any and all parts of this Defendant's defense in this case that depend or rely upon  
21 any government or industry standard, custom or practice, including:

- 22 (a) A citation of any government standard and the names of any publications in  
23 which those standards can be found;

24 (b) A citation to any industry standards, customs or practices, and a listing of the  
25 authorities in which those industry customs, standards or practices can be found.

26 | // / /

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1     **INTERROGATORY NO. 10:**

2                 State whether this Defendant has conducted any investigation into the facts of this  
3 incident and, if so, state the names and addresses of all persons or entities who have been  
4 contacted for information regarding this incident.

5     **INTERROGATORY NO. 11:**

6                 Please describe and identify all alternative designs considered for the brake air lines to  
7 protect them from being damaged by debris or objects during travel, including:

- 8                 (a)      The place of origin of the design;  
9                 (b)      The name and address of the primary designer or engineer for that design;  
10                 (c)      The reason the alternative design was not adopted by Wabash.

11     **INTERROGATORY NO. 12:**

12                 Do you believe that the brake air line on the subject trailer on the night of the incident  
13 was the original (as it came from the factor) or a replacement? If a replacement:

- 14                 (a)      Was the replacement air line installed according to your instructions?  
15                 (b)      Describe any differences between the original and the replacement air line, and  
16                         the manner of installation;  
17                 (c)      Explain whether such difference made the air line more susceptible to damage  
18                         from road debris or objects during travel than the original design, and how so.

19     **INTERROGATORY NO. 13:**

20                 Do you believe the subject trailer was altered by anyone since its manufacture, and if so,  
21 explain what alterations you believe were made, and whether such alterations, in your opinion,  
22 caused or contributed to the damage to the brake air line and/or brakes locking up on the night of  
23 the incident.

24     **INTERROGATORY NO. 14:**

25                 At any time before or since the design and manufacture of the subject trailer, did you  
26 consider that damage to the brake air line would cause the brakes to set or lock up during travel,  
27 and if so, when, and what actions did you take to minimize the risk of such?

28     ////



**1 | INTERROGATORY NO. 15:**

2 At any time before or since the design and manufacture of the subject trailer, did you  
3 consider that the brake air line crossing over in front of the axle could be damaged from road  
4 debris or objects during travel, and if so, when, and what actions did you take to minimize the  
5 risk of such damage? *H*

6 DATED this 15 day of November, 2013.

LADAH LAW FIRM

RAMZY PAUL LADAH, ESQ.  
Nevada Bar No. 11405  
517 S. Third Street  
Las Vegas, NV 89101  
Attorneys for Plaintiff



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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on this 5 day of November, 2013, a true and complete copy of **INTERROGATORIES TO DEFENDANT (FIRST SET)** was served on the following interested parties by the action(s) indicated below:

**5** Pat Lundvall, Esq.  
**6** Craig A. Newby, Esq.  
**7** McDonald Carano Wilson  
2300 W. Sahara Ave., Ste. 1200  
**8** Las Vegas, NV 89102  
Fax: 702.873.9966  
**9** Attorney for Defendants

Patrick McKnight, Esq.  
7473 W. Lake Mead Blvd., Ste. 100  
Las Vegas, NV 89128  
Fax: 800.604.7015  
Co-Counsel for Plaintiffs

## 9 | Method of Service

- 10  **U.S. First Class Mail:** I deposited a true and correct copy of said document(s) via U.S.  
11 First Class mail, with postage pre-paid.

12  **Facsimile:** I caused said document(s) to be transmitted by facsimile transmission. The  
13 sending facsimile machine properly issued a transmission report confirming that the  
transmission was complete and without error.

14  **Electronic Mail:** I caused said document(s) to be delivered by emailing an attached  
15 Adobe Acrobat PDF of the document to the email address(es) identified below.

16  **Electronic Service:** I caused said document(s) to be delivered by electronic means upon  
17 all eligible electronic recipients via the United States District Court CM/ECF system

An employee of Ladah Law Firm

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5 Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

DISTRICT OF NEVADA

JESSE CRUZ, and individual; MARIA CRUZ, an individual; and GEOVANY MARTINEZ, an individual,

Case No.: 2:12-cv-01627-RCJ-CWH

**Plaintiffs,**

Vg.

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
001	11/05/13 14:53	<b>8739966</b>	0°03'19"	FAX	OK	200x100 Normal/Off
002	11/05/13 14:57	<b>18006047015</b>	0°03'10"	FAX	OK	200x100 Normal/Off

# **EXHIBIT 2**

APR 14 2014

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7 *Attorneys for Defendant Wabash National  
 Corporation*

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 JESSE CRUZ, et al.,

Case No.: 2:11-cv-00342-GMN-VCF

12 Plaintiffs,

CONSOLIDATED WITH:  
 Case Nos.: 2:12-cv-00051-GMN-VCF  
 2:12-cv-01627-JAD-CWH

13 vs.

14 DANNY DURBINI, et al.,

15 Defendants.

DEFENDANT'S ANSWERS TO PLAINTIFFS'  
 FIRST SET OF INTERROGATORIES

16  
 17  
 18  
 19 Defendant Wabash National Corporation ("Wabash") hereby responds to Plaintiffs JESSE  
 20 CRUZ, MARIA CRUZ and GEOVANY MARTINEZ (collectively "Plaintiffs") First Set of  
 21 Interrogatories to Defendant WABASH NATIONAL CORPORATION served upon Defendant's  
 22 counsel pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure. Discovery and  
 23 investigation are continuing and Defendant reserves the right to supplement and amend these  
 24 responses.

25 **GENERAL RESPONSES AND OBJECTIONS**

26 These general objections and caveats are applicable to each and every interrogatory and  
 27 response unless otherwise specified, and are incorporated into each response as though set forth in  
 28 full.

1       1. These responses are made solely for the purpose of this action.

2       2. Defendant reserves the right to make any and all evidentiary objections to the  
3 introduction of any of these responses and/or any information contained therein (including without  
4 limitation documents) into evidence at any hearing in this case or otherwise, and reserves the right to  
5 raise these objections as a bar to introduction of any of these responses or information contained  
6 therein at any hearing or otherwise. Each response is subject to all objections as to competence,  
7 relevance, materiality, propriety, admissibility, and exclusion of any statement herein as if any  
8 portion of the requests were asked of, or if any statement contained herein was made by, a witness  
9 present and testifying in court, all of which objections and grounds are reserved and may be  
10 interposed at the time of any hearing. Plaintiffs should not imply or infer the admission of any  
11 matter from these responses or any information produced, except as explicitly stated.

12       3. These responses are based upon information presently known and ascertained by  
13 Defendant. However, Defendant has not yet completed his investigation of all the circumstances  
14 relating to this dispute and has not completed discovery or preparation for trial of this matter.  
15 Accordingly, the responses herein are without prejudice to utilizing subsequently discovered or  
16 recalled information. Defendant reserves the right to amend, add to, delete from, or in any other  
17 manner modify these responses after it has completed its discovery and investigation efforts and has  
18 ascertained all relevant facts.

19       4. Defendant objects to each interrogatory (and any portion thereof) to the extent that it  
20 purports to call for privileged information, including information protected by the attorney-client  
21 privilege, work product doctrine, and/or investigative privilege. Defendant's attorneys join in these  
22 objections to the extent that the right to protect information from discovery belongs to those  
23 attorneys. In making its responses to the interrogatories, and/or in producing documents for  
24 inspection and/or copying, Defendant will not produce any such privileged information.

25       5. Defendant objects to each interrogatory (and any portion thereof) to the extent it is  
26 overly or unduly burdensome, vague, ambiguous, unintelligible, uncertain, incomprehensible,  
27 compound, oppressive, intrusive of the privacy or proprietary rights of Defendant and/or third  
28 parties, overbroad, irrelevant, not reasonably calculated to lead to the discovery of admissible

1 evidence, fails to identify the information requested with reasonable or adequate particularity, or  
2 seeks to impose upon Defendant burdens beyond those established under the Nevada Rules of Civil  
3 Procedure.

4       6.      Defendant has performed reasonable inquiries in search of information as required by  
5 the Federal Rules of Civil Procedure and has made reasonable, good faith effort to locate the  
6 information described herein. Defendant cannot affirm, however, that "all" such information has  
7 been supplied. Although Defendant believes that all such information has been produced that is  
8 within its possession, custody, and/or control, Defendant will supplement these responses in  
9 accordance with the applicable discovery rules in the event that Defendant discovers it has  
10 inadvertently failed to provide information within its responses.

11       7.      Defendant objects to each interrogatory that uses language such as "each and every"  
12 or similar broad language. Such interrogatories are onerous, burdensome, harassing, prejudicial, and  
13 overly broad. Each interrogatory asking "any" and "all" or "each and every" is objectionable and  
14 such an inquiry, in essence, is a request for evidence, and not discoverable information. See, e.g.,  
15 United States v. Renault Inc., 27 F.R.D. 23, 26-27 (S.D.N.Y. 1960). Moreover, Defendant has no  
16 possible means of making the all-encompassing identifications such a broadly worded request  
17 requires.

18       8.      Defendant objects to each interrogatory (and any portion thereof) to the extent that it  
19 seeks to impose a burden upon it to search for information or documents in the possession, custody  
20 or control of persons or entities other than itself for the reason that such an interrogatory is overly  
21 broad and beyond the scope of discovery allowed by the Federal Rules of Civil Procedure.  
22 Defendant also objects to any interrogatory that seeks to require it to search for documents or  
23 information in the possession, custody or control of unnamed entities other than Defendant,  
24 including but not limited to information that is in the possession, custody or control of public  
25 entities, for the reason that such is unduly burdensome, expensive, harassing and beyond the  
26 obligations imposed upon it by the Federal Rules of Civil Procedure.

27       9.      As stated above, Defendant objects to all interrogatories to the extent they call for  
28 production of privileged and/or protected information. In the event that Defendant unintentionally

1 produces information which is privileged and/or protected, such production is inadvertent and  
2 without the intent to waive Defendant's privileges and/or protections applicable thereto. In the event  
3 that privileged and/or protected information is unintentionally produced, Defendant requests that all  
4 such information (including copies of any documents) be promptly returned to Defendant or its  
5 attorneys of record, and Defendant expressly reserves all objections to any use of such information  
6 in this litigation.

7        10. The restatement of any specific objection in the context of these responses shall not  
8 be construed to imply waiver of any unstated objections addressed by these General Objections and  
9 Caveats, or any other applicable privilege or exemption from discovery and the counterparts under  
10 the laws of any jurisdiction that may be applicable.

11       Subject to all of the foregoing objections, which are incorporated into each of the  
12 subsequent responses by this reference, Defendant responds to Plaintiffs' First Set of  
13 Interrogatories as follows:

## **RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:**

16 State the correct name and mailing address of this Defendant, as well as the name and  
17 address of any person(s) assisting in answering these interrogatories.

**RESPONSE TO INTERROGATORY NO. 1:**

19 Wabash objects to this interrogatory to the extent it seeks attorney-client privileged  
20 information and attorney work product. Subject to its objections, Wabash responds as follows:  
21 Wabash National Corporation, P.O. Box 6129, Lafayette, Indiana. Assisting in answering these  
22 interrogatories were John Gabriel and Kristin Glazner, 1000 Sagamore Parkway S., Lafayette, IN  
23 47905.

**INTERROGATORY NO. 2:**

25 State the date of manufacture of the subject vehicle, the date it left this Defendant's control,  
26 and who it was sold to as well as the name and address of the facility where the vehicle was  
27 manufactured.

28 | //

1     **RESPONSE TO INTERROGATORY NO. 2:**

2                 Subject to its objections, Wabash responds as follows: Wabash assembled the subject trailer  
3 on or about September 15, 1997, releasing it for use by U.S. Xpress Enterprises, Inc. in fall 1997.  
4 The subject trailer was assembled at Wabash National, 1000 Sagamore Parkway S., Lafayette, IN  
5 47905.

6     **INTERROGATORY NO. 3:**

7                 State the names and addresses of all persons primarily responsible for the design, engineering  
8 and safety engineering of the brakes and brake air lines for the subject vehicle, including department  
9 heads as well as those directly involved in the design and testing.

10    **RESPONSE TO INTERROGATORY NO. 3:**

11                 Subject to its objections, Wabash answers as follows: Wabash did not design or engineer the  
12 brake configuration for the subject trailer. From review of its sales records, the brake systems  
13 selected for the subject trailer contained several component parts, each designed by different entities.  
14 This included a Bendix service valve, a Tramec emergency valve, Dayton brake drums, MGM brake  
15 chambers, Abex brake linings, and Rockwell axles manufactured by what is now known as Meritor.

16                 Wabash did not have an employee who is responsible for the design, engineering, and/or  
17 safety engineering of the brakes and brake air lines for the subject trailer. Wabash believes that the  
18 manufacturer of the original brake air lines installed by Wabash at the time of manufacture was  
19 Parker Hannifin Corporation, who designs and manufactures its brake air lines and components in  
20 accordance with federal regulations and applicable industry standards. Wabash was responsible for  
21 the installation of the original fittings for the brake air lines at the time of manufacture, and testing of  
22 the original air line following manufacturing of the subject trailer. However, based on information  
23 provided by Plaintiffs, the original brake air line and fittings are no longer on the trailer and were  
24 replaced prior to the accident at issue in this case.

25    **INTERROGATORY NO. 4:**

26                 Identify any and all studies, analyses or tests this Defendant has conducted or performed with  
27 regard to the subject vehicle's brake air lines exposure to damage from road debris or objects, and  
28 for each state the following:

- 1                   (a)     The number of such tests that were performed;
- 2                   (b)     A description of the methodology for each such test;
- 3                   (c)     The name or test number by which the test results are referred;
- 4                   (d)     A summary of the test results;
- 5                   (e)     The name and address of each person involved in the performance of such tests or  
analysis.

7                   **RESPONSE TO INTERROGATORY NO. 4:**

8                   Subject to its objections, Wabash answers as follows: Wabash did not design or engineer the  
9                   brakes and the brake configuration for the subject trailer, originally manufactured in 1997.

10                  **INTERROGATORY NO. 5:**

11                  Identify any and all trailer designs manufactured by Wabash that used a brake air line that  
12                  crosses over in front of the axle, and for each, state whether those designs are currently being  
13                  manufactured by Wabash, and if not, when was such design changed or discontinued, and why.

14                  **RESPONSE TO INTERROGATORY NO. 5:**

15                  Subject to its objections, Wabash answers as follows: Wabash did not design or engineer the  
16                  brakes and the brake configuration for the subject trailer, originally manufactured in 1997. The  
17                  brake air line that is at issue [this brake air line is one of 6 for the trailer] and is currently installed on  
18                  the subject trailer is not the brake air line that was installed at the time of manufacture. Therefore,  
19                  Wabash's installation of the original brake air line is not relevant to this dispute.

20                  **INTERROGATORY NO. 6:**

21                  State whether this Defendant provided any information, warnings and/or instructions to  
22                  buyers and/or repairmen of the subject trailer concerning the protection and/or replacement of brake  
23                  air lines, and identify any such information, warnings and/or instructions, and attach a copy.

24                  **RESPONSE TO INTERROGATORY NO. 6:**

25                  Subject to its objections, Wabash answers as follows: Wabash has branches and authorized  
26                  warranty providers throughout the United States that service trailers manufactured by Wabash. At  
27                  those authorized locations, customers can seek repair of their Wabash trailers. Repair professionals

1 at these authorized locations install replacement parts in accordance with Wabash specifications,  
2 industry standards, and applicable federal regulations.

3 **INTERROGATORY NO. 7:**

4 Have you ever received any notice, complaints, claims and/or lawsuits prior to this incident  
5 of any damage to brake air lines and if yes, identify who gave you notice, complaint, claim or  
6 lawsuit, when are how it was made, and whether the damage resulted in an accident, personal injury  
7 or property damage.

8 **RESPONSE TO INTERROGATORY NO. 7:**

9 Wabash objects to the interrogatory as overly broad to the extent it is not limited by  
10 approximate time, design, or manufacturer of the brake air line at issue for the subject trailer.  
11 Subject to its objections, Wabash responds as follows: With respect to the brake air line  
12 configuration of the subject trailer, which is still used in trailers of numerous assemblers and  
13 manufacturers, Wabash is unaware of any notice, complaint, claim, or lawsuit for any failure or  
14 other problem with respect to the brake air lines in such a configuration. Wabash did not receive any  
15 such notice or complaint from the original purchaser, who purchased more than one thousand trailers  
16 with this configuration.

17 **INTERROGATORY NO. 8:**

18 Identify any and all discussions, oral or written, that you have had regarding any concern by  
19 you or others about the safety of brake air lines crossing over in front of the axle exposing the line to  
20 damage from road debris and objects during travel.

21 **RESPONSE TO INTERROGATORY NO. 8:**

22 Wabash objects to the interrogatory as overly broad to the extent it is not limited by  
23 approximate time, design, or manufacturer of the brake air line at issue for the subject trailer.  
24 Subject to its objections, Wabash responds as follows: With respect to the brake air line  
25 configuration of the subject trailer, which is still used in trailers of numerous assemblers and  
26 manufacturers, Wabash is unaware of any notice, complaint, claim, or lawsuit for any failure or  
27 other problem with respect to the brake air lines in such a configuration. Wabash did not receive any  
28

1 such notice or complaint from the original purchaser, who purchased more than one thousand trailers  
 2 with this configuration.

3 **INTERROGATORY NO. 9:**

4 Identify any and all parts of this Defendant's defense in this case that depend on or rely upon  
 5 any government or industry standard, custom or practice, including:

- 6       (a)     A citation of any government standard and the names of any publications in which  
                         those standards can be found;
- 7       (b)     A citation to any industry standards, customs or practices, and a listing of the  
                         authorities in which those industry customs, standards or practices can be found.

8       **RESPONSE TO INTERROGATORY NO. 9:**

9       Wabash objects to this interrogatory to the extent it seeks the premature disclosure of expert  
 10 disclosures and seeks protected attorney work-product information. Subject to its objections,  
 11 Wabash answers as follows: Wabash has not yet determined its defense in full for this case, as it has  
 12 a pending motion to dismiss Plaintiffs' deficient complaint. However, Wabash notes that it  
 13 assembles all its trailers, including the subject trailer, in accordance with all applicable federal  
 14 statutes and/or regulations for trailer manufacturers.

15       **INTERROGATORY NO. 10:**

16       State whether this Defendant has conducted any investigation into the facts of this incident  
 17 and, if so, state the names and addresses of all persons or entities who have been contacted for  
 18 information regarding this incident.

19       **RESPONSE TO INTERROGATORY NO. 10:**

20       Wabash objects to this interrogatory as vague to the extent investigation is an undefined  
 21 term. Wabash further objects to this interrogatory to the extent it seeks the premature disclosure of  
 22 expert disclosures. Subject to its objections, Wabash responds as follows: Wabash, upon learning of  
 23 two federal court cases pertaining to the same accident, began reviewing discovery and other  
 24 documents filed in those cases. Wabash also participated in a visual inspection of the subject trailer  
 25 in May 2012.

26       ///

**INTERROGATORY NO. 11:**

Please describe and identify all alternative designs considered for the brake air lines to protect them from being damaged by debris or objects during travel, including:

- (a) The place of origin of the design;
- (b) The name and address of the primary designer or engineer for that design;
- (c) The reason the alternative design was not adopted by Wabash.

**RESPONSE TO INTERROGATORY NO. 11:**

Wabash objects to this interrogatory to the extent that it mistakenly assumes that Wabash selected the brake system for the subject trailer, rather than the original purchaser. Subject to its objections, Wabash answers as follows: Wabash did not design the brake components or the brake configuration selected by the original customer for the purchase of the subject trailer.

**INTERROGATORY NO. 12:**

Do you believe that the brake air line on the subject trailer on the night of the incident was the original (as it came from the factor) or a replacement? If a replacement:

- (a) Was the replacement air line installed according to your instructions?
- (b) Describe any differences between the original and the replacement air line, and the manner of installation;
- (c) Explain whether such difference made the air line more susceptible to damage from road debris or objects during travel than the original design, and how so.

**RESPONSE TO INTERROGATORY NO. 12:**

Wabash objects to this interrogatory to the extent that it contains discrete subparts that should each be counted as a separate interrogatory. Subject to its objections, Wabash responds as follows: Wabash has not seen or inspected the brake air line that allegedly was on the subject trailer on the night of the incident, and understands that the brake air line is no longer possessed by Plaintiffs. Accordingly, Wabash has no first hand basis to respond to the subparts to this interrogatory. However, based on the trailer having been in service since 1997, Wabash believes it is very unlikely that the brake air line on the subject trailer on the night of the incident was the original (as it came from the factory) and that it is most likely that any brake air line would be a replacement.

1 Additionally, based on Wabash's review of the photograph that Plaintiffs claim depicts the air line in  
 2 use on the night of the accident, the air line in the photograph appears to have neither the same color,  
 3 length, nor material as any air line originally installed by Wabash. Based solely on review of the  
 4 photograph provided by Plaintiffs, the incorrect length of the air line, as well as the apparent failure  
 5 of the line to elongate prior to rupture, strongly indicates that the air line may not be compliant with  
 6 Department of Transportation regulations for brake air lines, making it much more susceptible to  
 7 damage from road debris or other objects than any air line Wabash would have installed in 1997.  
 8 Inspection of the brake air line from the alleged accident is necessary to more fully respond to this  
 9 interrogatory.

10 **INTERROGATORY NO. 13:**

11 Do you believe the subject trailer was altered by anyone since its manufacture, and if so,  
 12 explain what alterations you believe were made, and whether such alterations, in your opinion,  
 13 caused or contributed to the damage to the brake air line and/or brakes locking up on the night of the  
 14 incident.

15 **RESPONSE TO INTERROGATORY NO. 13:**

16 Wabash objects to this interrogatory to the extent it assumes that the brakes for the trailer  
 17 locked up on the night of the incident and to the extent it is vague because the term "altered" is  
 18 undefined. Wabash further objects to this interrogatory to the extent it prematurely seeks expert  
 19 information. Subject to its objections, Wabash answers as follows: The subject trailer  
 20 (manufactured in 1997) had been in service for nearly 13 years at the time of the alleged accident,  
 21 making it nearly certain that alterations had been made. As set forth above in response to  
 22 Interrogatory No. 13, based on review of a picture provided by Plaintiffs alone, the brake air line at  
 23 issue was not the one installed by Wabash at the time of manufacture and may not be compliant with  
 24 Department of Transportation regulations for brake air lines. Wabash is uncertain what other  
 25 specific alterations had been made and whether such alterations caused or contributed to the alleged  
 26 accident. Discovery is ongoing and Wabash reserves the right to supplement at the appropriate  
 27 discovery deadlines.

28 ///

1     **INTERROGATORY NO. 14:**

2                 At any time before or since the design and manufacture of the subject trailer, did you  
3 consider that damage to the brake air line would cause the brakes to set or lock up during travel, and  
4 if so, when, and what actions did you take to minimize the risk of such?

5     **RESPONSE TO INTERROGATORY NO. 14:**

6                 Subject to its objections, Wabash responds as follows: Wabash was not the manufacturer of  
7 the brakes and brake configuration on the subject trailer. Wabash has not yet had the opportunity to  
8 inspect the brake air line that was present at the time of the accident, but from review of a picture  
9 provided by Plaintiffs purporting to be it, that brake air line was not installed by Wabash and may  
10 not be compliant with Department of Transportation regulations for brake air lines.

11     **INTERROGATORY NO. 15:**

12                 At any time before or since the design and manufacture of the subject trailer, did you  
13 consider that the brake air line crossing over in front of the axle could be damaged from road debris  
14 or objects during travel, and if so, when, and what actions did you take to minimize the risk of such  
15 damage?

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**1 | RESPONSE TO INTERROGATORY NO. 15:**

2 Subject to its objections, Wabash answers as follows Wabash was not the manufacturer of  
3 the brakes and brake configuration on the subject trailer. Wabash has not yet had the opportunity to  
4 inspect the brake air line that was present at the time of the accident, but from review of a picture  
5 provided by Plaintiffs purporting to be it, that brake air line was not installed by Wabash and may  
6 not be compliant with Department of Transportation regulations for brake air lines. Further,  
7 Plaintiffs did not have the trailer serviced by Wabash or a Wabash-authorized repair facility.

8 Dated this 17th day of January, 2014.

McDONALD CARANO WILSON LLP

By: /s/ Craig A. Newby  
PAT LUNDVALL (#3761)  
CRAIG A. NEWBY (#8591)  
JEFFRY S. RIESENMY (#12855)  
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*Attorneys for Defendant Wabash National Corporation*

## VERIFICATION

STATE OF INDIANA )  
 ) ss  
COUNTY OF TIPPECANOE )

JOHN GABRIEL, being first duly sworn, deposes and says that he has read the foregoing **DEFENDANT'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** and knows the contents thereof and that the same is true based on his information and belief.

WABASH NATIONAL CORP.

Name: John Gabriel  
Title: Warranty Technician

SUBSCRIBED AND SWORN to before  
me this 17<sup>th</sup> day of January, 2014.

NOTARY PUBLIC

296178 1

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP, and that on the 17th day of January, 2014, a true and correct copy of the foregoing **DEFENDANT'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** was served via U.S. mail, postage prepaid, upon the following:

<p>Ramzy Paul Ladah 517 S. Third Street Las Vegas, NV 89101 E-mail: <a href="mailto:ramzy@ladahlaw.com">ramzy@ladahlaw.com</a></p>	<p>Todd Bresney Kanoski Bresney 237 East Front Street Bloomington, IL 61701 Email: <a href="mailto:toddb@kanoski.com">toddb@kanoski.com</a></p>
<p>Patrick McKnight, Esq. 7473 W. Lake Mead, Ste. 100 Las Vegas, NV 89129 E-mail: <a href="mailto:pmlaw@cox.net">pmlaw@cox.net</a></p>	<p>Christian Gabroy Gabroy Law Offices 170 S. Green Valley Pkwy, Suite 280 Henderson, NV 89102 Email: <a href="mailto:Christian@gabroy.com">Christian@gabroy.com</a></p>
<p>Anne E. Padgett, Esq. Wade M. Hansard, Esq. Jamie K. Combs, Esq. McCormick, Barstow, Sheppard, Wayte &amp; Carruth LLP 8337 W. Sunset Road, Suite 350 Las Vegas, NV 89113 Email: <a href="mailto:Anne.padgett@mccormickbarstow.com">Anne.padgett@mccormickbarstow.com</a> Email: <a href="mailto:Wade.hansard@mccormickbarstow.com">Wade.hansard@mccormickbarstow.com</a> Email: <a href="mailto:Jamie.combs@mccormickbarstow.com">Jamie.combs@mccormickbarstow.com</a></p>	<p>Loren S. Young, Esq. Lincoln, Gustafson &amp; Cercos 3960 Howard Hughes Pkwy, Suite 200 Las Vegas, NV 89169 Email: <a href="mailto:lyoung@lgclawoffice.com">lyoung@lgclawoffice.com</a></p>
<p>Bruce S. Dickinson, Esq. Stephenson &amp; Dickinson 2820 W. Charleston Blvd, Suite B-19 Las Vegas, NV 89102 Email: <a href="mailto:admin@sdlawoffice.net">admin@sdlawoffice.net</a></p>	<p>Travis W. Brandt, Esq. Bell &amp; Young, Ltd. 4001 Meadows Lane Las Vegas, NV 89107 Email: <a href="mailto:t.brandt@bellandyoung.com">t.brandt@bellandyoung.com</a></p>
<p>Jose Castro 1310 Hunter Drive Redlands, CA 92374</p>	

/s/ Marianne Carter  
An employee of McDonald Carano Wilson LLP

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# **EXHIBIT 3**

## LAW OFFICE OF PATRICK K. McKNIGHT

ATTORNEY AT LAW  
7473 W. Lake Mead, Suite 100  
Las Vegas, Nevada 89128  
Phone: (702) 822-6800  
Fax: (800) 604-7015  
Email: pmlaw@cox.net

April 2, 2014

Craig Newby, Esq.  
McDonald Carano Wilson  
2300 W Sahara, Suite 1000  
Las Vegas, NV 89102

Via fax: 702-873-9966  
Via Email: cnewby@mcdonaldcarano.com

Re: Cruz v. Wabash

Craig,

This will confirm the telephone conversation we had today regarding discovery in the above matter.

Because the additional attorneys from consolidation have added more time to getting everyone to agree to the confidentiality agreement, we have not yet received our first request to produce documents. And further, because the trailer in question is from 1997, your client needs additional time to review paper records that are not on computer to answer some of our key interrogatories. Thus we agreed it was in both of our clients' interests and agreed to a 90 day extension for the initial expert disclosures. We agreed to limit the extension only to experts regarding liability for the defect claims. Your office will prepare and circulate a stipulation and order.

Regarding discovery, we were able to come to agreement on most matters. We did not agree on all matters, but we agreed that we are likely to get most of the information we need from the supplemental answers discussed herein, and would therefore put off for now any disagreements on the other matters pending the information provided pursuant to our conversation today. We agreed that it was premature to discuss Answers to Admissions as much of that information may be clarified and answered with additional discovery. We reserve our right to revisit any of those other discovery issues, if need be.

**Request to Produce Documents:** We have approved the draft for confidentiality. It appears other attorneys' changes are still trickling in. Once you procure everyone's signature on the final draft, you will produce the documents in response to our Request. Since everyone has had weeks to give their input, it seems a cutoff in the next day or two would be warranted.

### **Interrogatories:**

**No. 3:** In order to make it easier to locate the relevant information, we have agreed to narrow this interrogatory to the design for the routing location of the air lines that cross over in front of the axle. You indicated that it has been very difficult to track down employees who might have had some design responsibility for the brakes in 1997. You agreed that you would go back to

your client and try to find out the names of anyone who worked there at the time who would have been involved in the decision to route that air line. You said you have a good faith belief that of all the other third parties who were identified as component manufacturers for the braking system, Meritor designed and constructed the first trailer axle and most likely designed the air line crossover configuration, but you acknowledged that there could also be a Wabash employee who designed, or had some responsibility in approving the design and you would try to identify that person(s), or at a minimum, someone at Wabash who can identify him/them.

**No. 4:** We agreed to narrow this interrogatory specifically to the air lines that cross over in front of the first trailer axle. You agreed you would supplement the answer with either the information regarding any tests performed or that no such tests were performed.

**No. 5:** We agreed that other cross over designs were relevant and you would do your best to try to track down this information. You indicated that the problem is that the documents going back to 1997 were not on computer and there were different models and custom trailers produced so it is difficult to identify which ones had similar cross over configurations. I offered to reach an agreement on limiting the time frame, but you felt you could not reach an agreement on that until you had a better understanding how this information is kept. You agreed you would go back to your client and make a good faith effort to get this information, and, if you believed it was too burdensome, you would report back to me on the conditions making it so, whereby we would meet and confer regarding this issue.

**No. 6:** We agreed you would find out what specifications were provided by Wabash and how, and if Wabash provided any official support or service manuals regarding repair of the brake airlines, and if so, identify such, and if not, amend the answer that there were none.

**No. 8:** We agreed you will amend this answer to state that Wabash is not aware of any discussions regarding the safety of brake air lines crossing over in front of the axle.

**No. 10:** We agreed you will identify the parties by name and title. We agreed that for the non-employee, we will treat him as a retained expert for Wabash and will not make any attempt to contact him regarding this case.

**No. 15:** We agreed you will amend this answer to state that Wabash is not aware that anyone considered that the brake air line crossing over in front of the axle could be damaged from road debris or objects during travel.

We discussed a time frame to respond but we hung up before we finalized such. We will grant you 15 days to provide these answers, but if you feel more time is needed after your good faith effort, please contact me with a report on what you have so far and how much more time will be needed and we will accommodate you.

///

If this does not comport with your understanding of our conversation, please notify me immediately. Thank you for your professionalism.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick K. McKnight".

Patrick K. McKnight, Esq.

Cc: Ramzy Ladah, Esq.

# **EXHIBIT 4**

**CIVIL COVER SHEET** A - 1 2 - 6 6 0 2 0 6 - C  
**CLARK County, Nevada**  
**Case No.**     
*(Assigned by Clerk's Office)*

**I. Party Information**

Plaintiff(s) (name/address/phone): JESSE CRUZ, MARIA CRUZ, GEOVANY MARTINEZ

Defendant(s) (name/address/phone): WABASH NATIONAL CORPORATION

Attorney (name/address/phone):  
**RAMZY LADAH**  
517 S. 3rd Street, Las Vegas, NV 89109/  
Tel (702) 252-0055

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

**Civil Cases**

<p><b>Real Property</b></p> <p><input type="checkbox"/> <b>Landlord/Tenant</b>  <input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> <b>Title to Property</b>  <input type="checkbox"/> Foreclosure  <input type="checkbox"/> Liens  <input type="checkbox"/> Quiet Title  <input type="checkbox"/> Specific Performance</p> <p><input type="checkbox"/> <b>Condemnation/Eminent Domain</b></p> <p><input type="checkbox"/> <b>Other Real Property</b>  <input type="checkbox"/> Partition  <input type="checkbox"/> Planning/Zoning</p>	<p><b>Negligence</b></p> <p><input checked="" type="checkbox"/> <b>Negligence – Auto</b></p> <p><input type="checkbox"/> Negligence – Medical/Dental</p> <p><input type="checkbox"/> Negligence – Premises Liability (Slip/Fall)</p> <p><input type="checkbox"/> Negligence – Other</p>	<p><b>Torts</b></p> <p><input checked="" type="checkbox"/> <b>Product Liability</b></p> <p><input type="checkbox"/> Product Liability/Motor Vehicle</p> <p><input type="checkbox"/> Other Torts/Product Liability</p> <p><input type="checkbox"/> <b>Intentional Misconduct</b></p> <p><input type="checkbox"/> Torts/Defamation (Libel/Slander)</p> <p><input type="checkbox"/> Interfere with Contract Rights</p> <p><input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination)</p> <p><input type="checkbox"/> <b>Other Torts</b></p> <p><input type="checkbox"/> Anti-trust</p> <p><input type="checkbox"/> Fraud/Misrepresentation</p> <p><input type="checkbox"/> Insurance</p> <p><input type="checkbox"/> Legal Tort</p> <p><input type="checkbox"/> Unfair Competition</p>
<p><b>Probate</b></p> <p><input type="checkbox"/> <b>Summary Administration</b></p> <p><input type="checkbox"/> <b>General Administration</b></p> <p><input type="checkbox"/> <b>Special Administration</b></p> <p><input type="checkbox"/> <b>Set Aside Estates</b></p> <p><input type="checkbox"/> <b>Trust/Conservatorships</b>  <input type="checkbox"/> Individual Trustee  <input type="checkbox"/> Corporate Trustee</p> <p><input type="checkbox"/> <b>Other Probate</b></p>	<p><input type="checkbox"/> <b>Construction Defect</b></p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> General</p> <p><input type="checkbox"/> <b>Breach of Contract</b></p> <p><input type="checkbox"/> Building &amp; Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Other Contracts/Acct/Judgment</p> <p><input type="checkbox"/> Collection of Actions</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Guarantee</p> <p><input type="checkbox"/> Sale Contract</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> <b>Civil Petition for Judicial Review</b></p> <p><input type="checkbox"/> Other Administrative Law</p> <p><input type="checkbox"/> Department of Motor Vehicles</p> <p><input type="checkbox"/> Worker's Compensation Appeal</p>	<p><b>Other Civil Filing Types</b></p> <p><input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box)</p> <p><input type="checkbox"/> Transfer from Justice Court</p> <p><input type="checkbox"/> Justice Court Civil Appeal</p> <p><input type="checkbox"/> <b>Civil Writ</b></p> <p><input type="checkbox"/> Other Special Proceeding</p> <p><input type="checkbox"/> <b>Other Civil Filing</b></p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Conversion of Property</p> <p><input type="checkbox"/> Damage to Property</p> <p><input type="checkbox"/> Employment Security</p> <p><input type="checkbox"/> Enforcement of Judgment</p> <p><input type="checkbox"/> Foreign Judgment – Civil</p> <p><input type="checkbox"/> Other Personal Property</p> <p><input type="checkbox"/> Recovery of Property</p> <p><input type="checkbox"/> Stockholder Suit</p> <p><input type="checkbox"/> Other Civil Matters</p>

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

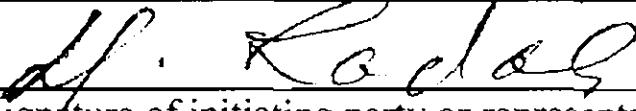
NRS Chapters 78-88  
 Commodities (NRS 90)  
 Securities (NRS 90)

Investments (NRS 104 Art. 8)  
 Deceptive Trade Practices (NRS 598)  
 Trademarks (NRS 600A)

Enhanced Case Mgmt/Business  
 Other Business Court Matters

4/17/2012

Date

  
Signature of initiating party or representative

*Attn: D. Schum*

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**CLERK**  
*3/30/12, CHECKED*

**COMP**  
**RAMZY PAUL LADAH, ESQ.**  
**NEVADA STATE BAR NO. 11405**  
**517 S. THIRD STREET**  
**LAS VEGAS, NEVADA 89101**  
**Telephone: (702) 252-0055**  
**Facsimile: (702) 248-0055**  
**ramzy@ladahlaw.com**

**CLERK OF THE COURT**

**PATRICK MCKNIGHT, ESQ.**  
**NEVADA STATE BAR NO. 4120**  
**9960 W. Cheyenne, Suite 190**  
**Las Vegas, NV 89129**  
**Telephone: (702) 822-6800**  
**Facsimile: (800) 604-7015**  
**ATTORNEYS FOR PLAINTIFFS**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\*\*\*\*\*

JESSE CRUZ, an individual; )  
 MARIA CRUZ, an individual; )  
 GEOVANY MARTINEZ, an individual; )

Plaintiffs )

CASE NO.: A - 1 2 - 6 6 0 2 0 6 - C

-vs-

DEPT. NO.: I I

WABASH NATIONAL CORPORATION; )  
 DOES I through XX, inclusive; )  
 and ROE BUSINESS ENTITIES )  
 I through XX, inclusive,

EXEMPT FROM ARBITRATION:  
 IN EXCESS OF \$50,000

Defendants )

**COMPLAINT**

COMES NOW Plaintiffs, **JESSE CRUZ**, an individual, and **MARIA CRUZ**, an individual,  
**GEOVANY MARTINEZ**, an individual, by and through their attorneys of record, **PATRICK**

1 MCKNIGHT, ESQ. and RAMZY P. LADAH, ESQ. and for their causes of action against Defendants,  
2 and each of them, allege and complain as follows:

3 **GENERAL ALLEGATIONS**

- 4
- 5 1. That the Plaintiffs were at all times mentioned herein residents of California;
- 6 2. That Defendant Wabash National Corporation was at all times mentioned herein a corporation  
7 in Indiana;
- 8 3. That all events mentioned herein occurred in Clark County, Nevada.
- 9 4. That at all times relevant herein, Defendants designated as DOES I through X and ROE  
10 CORPORATIONS I through X, in their true capacities, whether individual, corporate, associate or  
11 otherwise of the Defendants named herein are unknown to Plaintiffs who, therefore, sue said  
12 Defendants by said fictitious names; Plaintiffs are informed and believe and thereon allege that each of  
13 the Defendants designated as a DOES I through X  
14
- 15 5. That all times ROE CORPORATIONS I through X are responsible in some manner for the  
16 events and happenings referred to herein, and caused damages proximately to Plaintiffs as herein  
17 alleged, and Plaintiffs will ask leave of this court to amend this Complaint to insert the true names and  
18 capacities of DOES I through X and ROE CORPORATIONS I through X, when the same have been  
19 ascertained and to join such Defendants in this action.
- 20
- 21 6. That Defendant Wabash designed and manufactured a 1998 box trailer for sale and use in  
22 Nevada;
- 23
- 24 7. That the Plaintiffs, JESSIE CRUZ and MARIA CRUZ, were at all times mentioned herein, and  
25 still are, married.
- 26 8. On or around April 17, 2010, JESSE CRUZ was driving northbound on I-15 about 30 miles  
south of Las Vegas pulling the 1998 box trailer designed and manufactured by Wabash;

1 9. JESSE CRUZ was forced to pull over on the side of the road due to a defect in the trailer and  
2 during that emergency stop, another vehicle struck the trailer injuring JESSE CRUZ and GEOVANY  
3 MARTINEZ.  
4

5 **FIRST CAUSE OF ACTION**

6 **NEGLIGENCE**

7 10. Plaintiffs repeat and re-allege each and every allegation and fact contained herein and  
8 incorporate the same by reference;

9 11. Defendants, and each of them, were negligent;

10 12. As a direct and proximate result of Defendants' negligence, Plaintiffs have been injured in  
11 excess of \$10,000.00.

12 **SECOND CAUSE OF ACTION**

13 **PRODUCT DEFECT**

14 13. Plaintiffs repeat and re-allege each and every allegation and fact contained herein and  
15 incorporate the same by reference;

16 14. Defendants designed and manufactured and sold the trailer which was defective and  
17 unreasonably dangerous which led to the Plaintiffs' injuries.

18 15. As a direct and proximate result of Defendants' defective product, Plaintiffs have been injured  
19 in excess of \$10,000.00.

20 **THIRD CAUSE OF ACTION**

21 **BREACH OF WARRANTY**

22 16. Plaintiffs repeat and re-allege each and every allegation and fact contained herein and  
23 incorporate the same by reference;

24 17. That Defendants breached their warranty of implied fitness;

18. As a direct and proximate result of Defendants' breach, Plaintiffs have been injured in excess of \$10,000.00.

1. For general damages in excess of \$10,000;
  2. For special damages in excess of \$10,000;
  3. For reasonable attorney's fees and costs of suit herein; and
  4. For such other and further relief as the Court deems proper in the Defendants' negligent acts.

DATED: April 11, 2012

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NEVADA STATE BAR NO. 11405  
517 S. THIRD STREET  
LAS VEGAS, NEVADA 89101  
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1 IAFD

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Facsimile: (800) 604-7015

10 ATTORNEYS FOR PLAINTIFFS

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 \*\*\*\*\*

14 JESSE CRUZ, an individual; )  
15 MARIA CRUZ, an individual; )  
16 GEOVANY MARTINEZ, an individual; )  
17 Plaintiffs )

CASE NO.:

18 -vs- ) DEPT. NO.:  
19 )  
20 WABASH NATIONAL CORPORATION; )  
21 DOES I through XX, inclusive; ) EXEMPT FROM ARBITRATION:  
and ROE BUSINESS ENTITIES ) IN EXCESS OF \$50,000  
22 I through XX, inclusive, )  
23 Defendants )

25 INITIAL APPEARANCE FEE DISCLOSURE  
26 Pursuant to N.R.S. Chapter 19, as amended by Senate Bill 106, filing fees are submitted  
27 for parties appearing in the above entitled action as indicated below:

1 JESSE CRUZ, MARIA CRUZ, GEOVANY MARTINEZ: \$330.00

2 TOTAL: \$330.00

3  
4 DATED this 17<sup>th</sup> day of April, 2012.

5  
6  
7 By: \_\_\_\_\_  
8

9  
10 **RAMZY PAUL LADAH, ESQ.**  
11 **NEVADA STATE BAR NO. 11405**  
12 **LADAH LAW FIRM, PLLC.**  
13 **517 S. THIRD STREET**  
14 **LAS VEGAS, NEVADA 89101**  
15 **Telephone: (702) 252-0055**  
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17 **ATTORNEY FOR PLAINTIFFS**